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DAN E. ARNETT  
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August 15, 2005

**VIA HAND DELIVERY**

Mr. Charles L.A. Terreni  
Chief Clerk/Administrator  
South Carolina Public Service Commission  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

Re: Application of Melrose Utility Company, Inc., for Adjustments in Rates  
and Charges for Water and Sewer Services  
**Docket No. 2005-74-W/S**

Dear Mr. Terreni:

Enclosed for filing please find the original and ten (10) copies of the Office of Regulatory Staff's Objections to the Commission's Appointment of a Technical Advisor in the above referenced docket. Please date stamp the extra copy enclosed and return it to me via our courier.

Please let me know if you have any questions.

Sincerely,

C. Lessie Hammonds

CLH/rng  
Enclosures

cc: Robert T. Bockman, Esquire  
John F. Beach, Esquire

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2005-74-W/S**

IN RE: Application of Melrose Utility )  
Company, Inc. for Approval of an )  
Adjustment in Rates and Charges )  
For Water and Sewer Services )  
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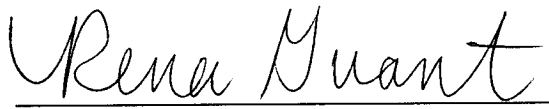
**CERTIFICATE OF SERVICE**

2005 AUG 15 PM 3:33  
CLERK OF COMMISSION  
COLUMBIA, SC

This is to certify that I, Rena Grant, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **Office of Regulatory Staff's Objections to the Commission's Appointment of a Technical Advisor** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Robert T. Bockman, Esquire  
**McNair Law Firm**  
Post Office Box 11390  
Columbia, SC 29211

John F. Beach, Esquire  
**Ellis Lawhorne & Sims, P.A.**  
Post Office Box 2285  
Columbia, SC 29202-2285

  
\_\_\_\_\_  
Rena Grant

August 15, 2005  
Columbia, South Carolina

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2005-74-W/S**

**August 15, 2005**

IN RE:

Application of Melrose Utility  
Company, Inc for Approval of  
An Adjustment in Rates and  
For Water and Sewer Service  
Service

**OFFICE OF REGULATORY  
STAFF'S OBJECTIONS TO  
THE COMMISSION'S  
APPOINTMENT OF A  
TECHNICAL ADVISOR**

By and through its undersigned counsel, the Office of Regulatory Staff ("ORS") respectfully objects to the August 9, 2005 Notice of the Commission's Intent to Appoint a Technical Advisor (the "Notice"). The Notice states that the Public Service Commission of South Carolina (the "Commission") intends to appoint Shelby LeBron, P.E., of B.P. Barber and Associates, as a technical advisor to "assist it in understanding the testimony and making the findings related to depreciation and rate design needed to issue an order in the requisite statutory time frame." The Notice further states that the "agreement for technical advice is between Ms. LeBron, not B.P. Barber and Associates, and the Public Service Commission. Ms. LeBron's advice will be limited to the record before the Commission, and she will not independently present evidence or testify before the Commission."

ORS objects to the appointment of Ms. LeBron as a technical advisor in this docket. First, it is the position of ORS that the Commissioners are deemed the experts in the field of rate regulation and the appointment of a technical advisor is unnecessary.

Second, ORS asserts that such an appointment may not comply with the mandates of South Carolina Code Sections 58-3-60 and 58-3-260. Third, the proposed agreement between Ms. LeBron and the Commission does not detail the exact work to be performed by Ms. LeBron. Instead, it describes her duties as providing “technical advice” and “at a minimum” reviewing applications, studying prefiled testimony and attending the hearings on the issues. The agreement also anticipates that Ms. LeBron will provide “advice on rate design, depreciation and other technical issues.” The description of these duties does not provide sufficient safeguards to ensure that her proposed role as technical advisor does not delve into fact-finding functions. Last, as reflected in her curriculum vitae, Ms. LeBron lacks experience in the areas of utility rate setting, utility economics and utility accounting, and, therefore, is unqualified to serve as a technical advisor in this case.

South Carolina law provides that “The Public Service Commission is recognized as the ‘expert’ designated by the legislature to make policy determinations regarding utility rates.” Heater of Seabrook, Inc. v. Public Service Commission of South Carolina, 332 S.C. 20, 27, 503 S.E.2d 739, 742 (1998) citing Patton v. South Carolina PSC, 280 S.C. 288 290-290, 312 S.E.2d 257, 259 (1984). “It has been said many times that . . . the Commission is a body of experts ‘composed of men of special knowledge, observation, and experience’ in the field of rate regulation.” Southern Bell Telephone and Telegraph Company v. Public Service Commission of South Carolina, 270 S.C. 590, 597, 244 S.E.2d 278, 282 (1978) quoting “approvingly” from State, ex rel. Utilities Commission v. General Telephone Company of the Southeast, 281 N.C. 318, 189 S.E.2d 705 (1972). During the current year, 2005, the Commission has held five hearings with water or

sewer companies and has had the expertise in rate regulation to hear these cases without a technical advisor.<sup>1</sup> The present case is distinguishable from the case of Colleton County v. McConnell, 201 F. Supp.2d 618, 625 (D.S.C. 2002) cited by the Commission in its Notice as support for appointing a technical advisor. In Colleton County, the lawsuit was based on alleged violations of federal law requiring the South Carolina General Assembly to redraw district lines and included many South Carolina elected officials as defendants. The court appointed Mr. Bobby Bowers, Director of the South Carolina Budget and Control Board Office of Research and Statistics, as its technical advisor “due to the unusual complexity surrounding this type of case, and the skills and expertise which it requires.” *Id.* Unlike the court in Colleton County, the Commission has the skill and expertise to hear the present case without a technical advisor. This matter in which Ms. LeBron has agreed to provide technical assistance should not be beyond the Commission’s expertise, and without more information, the ORS must respectfully object to the Commission appointing a technical advisor.

South Carolina Code Section 58-3-60(A) provides that the Commission is “authorized and empowered to employ: a chief clerk and deputy clerk; a commission attorney and assistant commission attorneys; hearing officers; hearing reporters; and such other professional, administrative, technical and clerical personnel as the commission determines to be necessary in the proper discharge of the commission’s duties and responsibilities as provided by law.” South Carolina Code Section 58-3-60(B) requires that the Commission “must be staffed and equipped to perform the functions set forth in

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<sup>1</sup> (1) Development Service, Inc., Docket No. 2004-212-S on 1/5/05; (2) Bush River Utilities, Inc., Docket No. 2004-259-S on 1/20/05; (3) Midlands Utility, Inc., Docket No. 2004-297-S on 2/24/05; (4) Lake Wylie Community Utilities, Inc., Docket No. 20044-353-WS on 4/27/05; and (5) Carolina Water Service, Inc., Docket No. 2004-357-WS on 5/4/05.

this title except for those responsibilities and functions reserved to the Office of Regulatory Staff.” The Commission does not possess the statutory authority to employ outside technical experts who are not employees of the Commission.

ORS respectfully objects to the Commission appointing Ms. Lebron as a technical advisor because Ms. LeBron is not subject to Act 174 of 2004. In Colleton County, unlike the present matter, Mr. Bobby Bowers was a state employee when he served as the court’s technical advisor. Not only are state and Commission employees subject to the Ethics Reform Act, but Commissioners and Commissioner employees are further restricted in their conduct under Act 175 of 2004 to the Judicial Code of Conduct. Here, Ms. LeBron is neither a Commission employee nor a state employee in general. Ms. LeBron is employed by B.P. Barber & Associates, an engineering firm. The agreement signed by Ms. LeBron is silent as to Act 175, the Ethics Reform Act, and the Judicial Code of Conduct. See S.C. Code Ann. § 58-3-30(B). Further, S.C. Code Ann. §58-3-260(B) of Act 175 prohibits ex parte communication:

[B] *Except as otherwise provided herein or unless required for the disposition of ex parte matters specifically authorized by law*, a commissioner, hearing officer, or commission employee shall not communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding *with any person without notice and opportunity for all parties to participate in the communication*, nor shall any person communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any commissioner, hearing officer, or commission employee without notice and opportunity for all parties to participate in the communication. (emphasis added).

Therefore, pursuant to this statute, a commissioner or hearing officer cannot communicate regarding the merits of the case with anyone without all the parties having

an opportunity to participate in the communication, unless the statute or law provides otherwise. Section 58-3-260(C) generally exempts from this prohibition “communications between and among commissioners regarding matters pending before the commission; provided, further, that any commissioner, hearing officer or commission employee may receive aid from commission employees if the commission employees providing aid do not...(b) furnish, augment, diminish, or modify the evidence in the record”. Therefore, since Ms. LeBron is not a Commission employee, she may not communicate with the Commission regarding matters in this docket. No other exemptions within Section 58-3-260(C) are applicable. Section 58-3-260(C)(8) addresses only commission “employees,” not contractual advisors. No exceptions exist within the statutes described above or within other statutory or regulatory law to allow the appointment of an outside contracted technical advisor. The parties would be deprived of an opportunity to participate in the communications between the Commission and Ms. LeBron if the Commission appoints Ms. LeBron as stated in the Notice.

The decision in Colleton County v. McConnell, 201 F. Supp.2d 618, 625 (D.S.C. 2002) cited in the Notice as support for Ms. LeBron’s appointment occurred before the implementation of the ex parte communication rules discussed above. Further, the agreement signed by Ms. LeBron provides no indication whether she agrees to not engage in prohibited ex parte communication. South Carolina Code Section 58-3-260(J) states “If a commissioner wilfully communicates with any party or person or if any person or party wilfully communicates with a commissioner regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten business days prior to the scheduled hearing on the merits, during the hearing or

after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law or other matter is or can reasonably be expected to become an issue, the commissioner shall be removed from office”.

The agreement contains no written instructions or job description and has no requirement for Ms. LeBron to file an affidavit or other proof at the end of the case indicating compliance with the instructions or job description. See Reilly v. United States, 863 F.2d 149, 159-160 (1<sup>st</sup> Cir.1988). No procedural safeguards exist to ensure the proposed technical advisor’s adherence to her limited proposed role. ORS, therefore, must respectfully object to the appointment of Ms. LeBron as a technical advisor.

Last, Ms. LeBron’s curriculum vitae indicates a lack of experience in utility rate setting, utility economics and utility accounting necessary of a technical advisor providing advice on depreciation and rate design. This docket includes issues regarding rate setting methodology, utility accounting and other water and sewer utility economic issues. ORS respectfully objects to Ms. LeBron’s appointment as a technical advisor in this case due to her inexperience and lack of expert qualifications regarding the issues in this case.

WHEREFORE, having stated its objections, ORS respectfully requests that the Commission refrain from appointing Ms. LeBron as a technical advisor in this case.



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C. Lessie Hammonds, Esquire  
Office of Regulatory Staff  
Post Office Box 11263  
Columbia, South Carolina 29211  
Phone: (803) 737-0800

August 15, 2005  
Columbia, South Carolina